

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-128010-10

Date:

September 20, 2010

### LEGEND

Company =

Predecessor =

Products =

Lenders =

B =

C =

D =

Liabilities =

Loan Agreement =

Agreement =

Company  
Preferred Stock =

A Warrants =

B Warrants =

C Warrants =

Note =

State =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your June 30, 2010 request for rulings on certain Federal income tax consequences of the series of proposed transactions described below (the "Proposed Transaction"). The information provided in that request and in the subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### Summary of Facts

Predecessor, a State corporation, is the common parent of an affiliated group of corporations that file a consolidated U.S. Federal income tax return on a calendar year basis. Prior to Date 5, Predecessor was a manufacturer of Products. Also prior to Date 5, Predecessor had net operating loss ("NOL") carryforwards and other tax attributes.

Predecessor's common stock is widely held and, prior to Date 4, was publicly traded. In addition, as of Date 3, Predecessor had outstanding stock options, warrants, and rights under various equity compensation plans to acquire shares of Predecessor common stock. As of Date 3, Predecessor's total liabilities to more than a secured and unsecured creditors were in excess of \$b. Predecessor was also obligated pursuant to agreements with B to transfer approximately \$c to C beginning in Month 1. In addition, Predecessor was liable for the payment of the Liabilities.

On Date 1, Predecessor entered into the Loan Agreement with the Department of the Treasury ("Treasury") under the Emergency Economic Stabilization Act of 2008 ("EESA"). The Loan Agreement required Predecessor to submit a restructuring plan to Treasury (the "Restructuring Plan") before receiving any amounts under the Loan Agreement. Among other requirements, the Restructuring Plan was required to include a number of specific actions to achieve several objectives, including: (i) repayment of all loans, interest, and expenses under the Loan Agreement, and all other funding provided by the U.S. government; (ii) rationalization of costs, capitalization, and capacity with respect to its manufacturing workforce and suppliers; and (iii) modification of

Predecessor's healthcare and pension obligations with respect to retired members of its manufacturing workforce.

Prior to Date 3, Predecessor submitted the Restructuring Plan as required by the terms of the Loan Agreement, as amended by Treasury and Predecessor on Date 2. Treasury determined that the Restructuring Plan was viable, and the Federal government would make available approximately \$d of additional assistance to support Predecessor's Restructuring Plan.

On Date 5, as provided in the Restructuring Plan and pursuant to the Agreement, Predecessor transferred substantially all of its assets to newly formed Company in exchange for various consideration, after which Predecessor was to liquidate for Federal income tax purposes prior to Date 7. For Federal income tax purposes, Predecessor was treated as making a transfer described in section 381(a)(2) of substantially all of its assets to Company in exchange for Company stock and other consideration, after which Predecessor was treated as distributing a portion of the Company stock and other consideration to D, the Lenders, and C (the "Prior Transaction") on Date 5. The Prior Transaction was, and the liquidation of Predecessor for Federal income tax purposes will be, undertaken pursuant to the Restructuring Plan and the Agreement.

As a result of the Prior Transaction, Company succeeded to the Federal income tax attributes of Predecessor, including its NOL carryforwards and other tax attributes, on Date 5 pursuant to section 381(a). The owner shifts occurring as a result of the Prior Transaction did not cause an ownership change within the meaning of section 382 of the Code and the regulations thereunder on Date 5.

Immediately after the Prior Transaction, Company became the common parent of an affiliated group of corporations that files a consolidated U.S. Federal income tax return on a calendar year basis. After Date 5, Company continued Predecessor's business of manufacturing Products.

Company has shares of common stock outstanding, which are held in the following proportions by the following shareholders: e percent by D; f percent by C; g percent by Lenders; and h percent by Predecessor. Company also has i shares of Company Preferred Stock outstanding that are held in the following approximate proportions by the following shareholders: j percent by C; k percent by D; and l percent by Lenders. While the holders of Company Preferred Stock generally do not have any voting rights, certain dividend nonpayment events may result in limited voting rights temporarily attaching to such shares.

In the Prior Transaction, Company issued three categories of warrants (collectively, the "Warrants") that entitled the holder, upon exercise, to receive physical delivery of Company common stock, par value \$0.01 per share, after payment of the full exercise price, or a net amount of shares of Company common stock without any

payment required. Predecessor received the A Warrants and B Warrants, whereas C received the C Warrants. Company also issued the Note to C.

As part of the Prior Transaction, the Liabilities were modified, at which point the modified Liabilities were assumed by Company. These modifications to the Liabilities were made in furtherance of the Restructuring Plan. As of Date 6, the amount of the Liabilities was approximately \$m, taking into account the effects of these modifications.

On Date 5, in connection with the Prior Transaction, Company, D, the Lenders, and C executed a “Stockholders Agreement” to govern the rights and obligations of the parties regarding certain matters relating to Company and the stockholders’ ownership and voting of the Company common stock. Concurrently with the execution of the Stockholders Agreement, Company, D, the Lenders, C, and Predecessor entered into an “Equity Registration Rights Agreement” by which Company agreed to provide the other parties to the agreement certain registration rights with respect to their Company common stock, Warrants, and Company Preferred Stock.

### **The Proposed Transactions**

Company contemplates a public offering of its stock (“IPO”) and the issuance of stock to satisfy a portion of the Liabilities (the “Proposed Transactions”). The IPO may be in the form of a primary IPO (*i.e.*, an offering of shares by Company directly to investors), a secondary IPO (*i.e.*, a sale of shares by existing shareholders to public investors), or a combination of the two.

It is anticipated that the Proposed Transactions will result in at least one testing date, and that the shifts attributable to the Proposed Transactions and the Prior Transaction will result in an ownership change of Company within the meaning of section 382 and the regulations thereunder.

### **Representations**

Company makes the following representations regarding the Proposed Transactions:

- (a) Company is the common parent of a loss group as defined in Treas. Reg. 1.1502-91(c)(1).
- (b) Company’s only classes of outstanding stock are the Company common stock and the Company Preferred Stock.
- (c) A principal purpose of the issuance, transfer, or structuring of the A Warrants, the B Warrants, and the C Warrants issued as consideration in the Prior Transaction was not to avoid or ameliorate the impact of an ownership change of any loss corporation.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The Restructuring Plan is a “restructuring plan” of Company that is required under a loan agreement for a line of credit entered into with the Treasury under the EESA, and is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, Company and its subsidiaries. Section 382(n)(1).
2. The owner shifts, within the meaning of section 382 and the regulations thereunder, occurring on Date 5 as a result of the Prior Transaction are pursuant to the Restructuring Plan.
3. Section 382(n) will apply to any ownership change of Company (within the meaning of section 382 and the regulations thereunder) that occurs pursuant to the Proposed Transactions if that ownership change would not have occurred had the stock acquired, respectively, by Predecessor, Lenders, and C pursuant to the Restructuring Plan not been taken into account in determining that shareholder’s percentage of stock ownership at any time during the testing period.

### **Caveats**

No opinion is expressed about the Federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the Federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

### **Procedural Matters**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

By: \_\_\_\_\_  
Lisa A. Fuller  
Senior Counsel  
Office of Associate Chief Counsel  
(Corporate)

cc: